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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Joint written statement* submitted by France Libertés : Fondation Danielle Mitterrand, Les Amis de la Terre-Togo, Stichting Forest Peoples Programme, non-governmental organizations in special consultative status, International Educational Development, Inc., Mouvement contre le racisme et pour l'amitié entre les peuples, non-governmental organizations on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[23 May 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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The Right of Indigenous Batwa Peoples to Land and Natural Resources in Uganda

The Batwa people do not enjoy their fundamental human rights and freedoms like other Ugandans. The international community and the Government of Uganda have benefited from the establishment of Bwindi, Mgahinga National Parks and Ecuya central forest Reserve at the expense and suffering of the Batwa

The Batwa are a marginalized indigenous minority group who live in Southwestern Uganda. Following the 1990 Ugandan government policy on biodiversity conservation, Batwa were evicted from Echuya, Mgahinga and Bwindi forests when the forests were gazetted as national parks becoming World Heritage Sites for preservation of endangered mountain gorillas[1].Unfortunately, no compensation was provided for the displaced Batwa, either in cash or as alternative lands. After forested land fell into the control of agro-industry and conservation by the government, the Batwa were forced to abandon their traditional lifestyle based on hunting and gathering becoming dependents on occasional work and begging. As one mutwa made a statement to park researchers "*The forest is our food, our life*"[2]. They encounter prejudice and discrimination on the part of the dominant culture, which refers to them as so-called Pygmies. The Batwa have become landless squatters living on the margins of both nature and life[3]. Their customary rights to land are not recognized by the state and they have no recourse to compensation, resulting in a situation where the majority is landless.

In Uganda, 80% of Batwa do not even have land on which to build a hut, and landless Batwa have nowhere left to go. As a result, they remain transient squatters constantly looking for somewhere they can lodge until they are moved on. As one Mutwa woman noted:
"These people who let us stay on their land, they call on us to cultivate. If we refuse they say 'Move away, we no longer want you.' We are not settled here, because other local people are pressing the landowners saying 'What do you need Batwa for?' and at any time we may have to shift and settle elsewhere. If the owners are sympathetic, they move us to another bit of land, which we fertilize for them by living on it. The landlords don't let us put up toilets because they don't want anything permanent on their land, or holes which could be a problem for cultivation later. But if they catch us defecating in the fields, they are angry. My daughter was caught and was forced to remove the faeces with her hands."
With an estimated population of only 6,700 Batwa in Uganda, discrimination, poverty and exclusion directly affect the their ability to find work and positions of responsibility as the majority of them remain isolated from the rest of Ugandan society due to their poverty and the mutual distrust that exists between the Batwa and Uganda's other ethnic groups. Many Batwa communities are highly stressed through unremitting, severe poverty, prejudice and conflicts from their neighbors and internal frictions between households resulting in additional threats to the Batwa. The discrimination and marginalization experienced by the Batwa from neighboring communities is deeply entrenched and takes the form of land rights violations, poor education and provision of social services[4], negative stereotyping (the Batwa are seen as backward and childish, incapable of speaking for or representing themselves, as thieves, dirty, ignorant and immoral), and segregation (Batwa people are often not allowed to draw water from a well at the same time as others, and intermarriage with other ethnic groups is frowned upon).
The rights of Indigenous Batwa to both the land and the resources on these lands are well established under international and national legislation. The Universal Declaration of Human Rights[5] recognizes each person's fundamental right to a decent standard of living, including access to drinking water and sanitation. Article 17 of the Declaration guarantees the right to own property either individually or in association with others. To safeguard this right, the Declaration proscribes arbitrary acquisition of property. Article 22 of the declaration requires states to promote the right to social security and economic development. This right includes the freedom to exercise economic,

[1] Kabananyuke and Wily, op. cit., Kingdon, E., 'Caught between two worlds: moral problems relating to conservation in south-west Uganda'.
[2] Kabananyuke and Wily, op. cit., p. 144.
[3] ACODE Policy Research Series, No.17, 2006.
[4] John Rwubaka, 2005. "We Batwa face discrimination" in The New Vision, November 9, 2005. Kampala.
[5] United Nations (Adopted by the UN General Assembly on 10 December 1948) : http://www.un.org/en/documents/udhr/.

social and cultural rights, rights that are indispensable to the dignity of humankind. Yet, protection and implementation of the right to safe drinking water and sanitation[6]depends on other rights: the right to determine its own development priorities; the right to land and natural resources; the right to consultation, to free, prior and informed consent; and the right to self-determination. All these rights have been enshrined in the International Labour Organization's Convention No 169 (ILO[7]) and in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP[8]).
Article 1 of the International Covenant on Civil and Political Rights[9] contains the self-determination clause, which calls upon states to grant indigenous groups the right to freely determine their political status and freely pursue their economic, social and cultural development. This article implicitly recognizes the right to exploit natural resources in pursuit of social and economic development. Hence the denial of indigenous peoples' right to own, use and exclude them from exploiting natural resources is in contradiction to the right to self-determination.
Uganda ratified the Covenant on Economic Social and Cultural Rights in 1987. Article 1 re-affirms the right to self-determination established by the International Covenant on Civil and Political Rights. The covenant recognizes the right to property and proscribes acts which lead to the deprivation of peoples' property especially property from which they derive their subsistence[10]. In general the Covenant gives economic, social and cultural rights the same level of importance to other human rights thus giving a platform for promoting CBPRs as fundamental human rights.

This statement is therefore to draw the attention of the Human Rights Council to the violation of the right to land and Free, Prior and Informed Consent of Indigenous Batwa peoples in Southwestern Uganda through the conservation of Bwindi and Mgahinga and Ecuya protected areas. We call on the government of the Republic of Uganda to assume its responsibilities and its obligation to protect Indigenous Batwa people's fundamental rights.

In particular, we urge the government to:

- Observe their international commitments, including the United Nations Declaration on the Rights of Indigenous Peoples, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights; ILO Convention n°169;
- Invoke the provisions of article 32 of the Constitution[11] and articulate a comprehensive affirmative action programme for the Batwa community covering areas like access to forest resources, revenue sharing arrangements[12], education, health services, housing, water and sanitation and to bring the Batwa issues into the work of Equal Opportunity commission
- Restore the Batwa peoples' rights and facilitate them to live with dignity and confidence in particular all lands which have been illegally expropriated from the Batwa should be returned to them.
- Recognize Batwa collective land rights in the constitutional law[13], in accordance with international standards on indigenous peoples' rights, in particular ensure that Batwa women are not discriminated against on the basis of sex and ethnicity in their claims and rights to own land.

We ask the Human Rights Council to urge the Ugandan Government and the international community meet their international law and constitutional obligations towards Batwa communities. Our organizations appeals to:

- The Special Rapporteur on the rights of indigenous peoples
- The Special Rapporteur on adequate housing
- The Special Rapporteur on the human right to safe drinking water and sanitation

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[6] Recognized by the UN general Assembly resolution 64/292 on July 28th 2010, A/RES/64/292.
[7] International Labour Organisation (adopted on 27 Jun 1989 and entry into force: 05 Sep 1991) http://www.ilo.org/dyn/normlex/fr/f?p=1000:12100:0::NO::P12100_ILO_CODE:C169.
[8] United Nations (adopted by the General Assembly on 13 September 2007) http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf.
[9] United Nations (adopted on 16 Dec 1966 and entry into force on 21 Oct 1976) http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx.
[10] United Nations (adopted on 16 December 1966 and entry into force on 23 March 1976) http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx.
[11] Article 32 of the Constitution enjoins Government to take action in support of marginalized and disadvantaged groups.
[12] Wildlife Act, Cap 2000. Law of Uganda, Revised Edition, 2000. Section 69(4).
[13] Constitution of the Republic of Uganda 1995.

- The Special Rapporteur on extreme poverty and Human Rights
- The Independent Expert on human rights and the environment to pay special attention to the serious and repeated violations of rights in particular the right to land and free prior and informed consultation of indigenous peoples.

Association of Humanitarian Lawyers, Gender Equality and Women Empowerment for Development (GWEFODE), Society for Threatened Peoples Switzerland, United Organisation for Batwa Development in Uganda (UOBDU), NGO(s) without consultative status, also share the views expressed in this statement.